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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 128

THE COUNTY BOARD OF ARLINGTON COUNTY, a Body Corporate, *et al.*,

Appellant,

vs.

STATE MILK COMMISSION,

Appellee.

Appeal From the Supreme Court of Appeals of the Commonwealth of Virginia.

APPELLEE'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO JURISDICTION.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

Pursuant to the request made by this Court during oral argument on January 4, 1954 the appellee, State Milk Commission of Virginia, by its undersigned Counsel, respect-

fully submits the following in support of its assertion that the Arlington County Board, appellant herein, lacks status to prosecute this appeal and that this Court, therefore, should dismiss this appeal.

PROCEEDINGS BELOW.

By its Order No. 4, the State Milk Commission, *inter alia*, increased the fixed minimum retail and wholesale selling prices of fluid milk in the Arlington-Alexandria market area. From that order an appeal [1] was taken to the Circuit Court of the City of Richmond, Virginia by "The County Board of Arlington County, Virginia, a body Corporate; and Florence E. Cannon, Chairman, F. Freeland Chew, Alfred E. Frisbe, Robert W. Cox, Daniel A. Dugan, Members of the County Board *Petitioners*" (our emphasis). Petitioners considered themselves "aggrieved" by the Commission's Order alleging in Par. 2 of their Petition (R. 1)

> "The County of Arlington, Virginia, is a purchaser of milk, and the above named petitioners, members of the Arlington County Board, are residents of Arlington County, and they are purchasers and consumers of milk and cream at retail delivered to them in said county, and said members of the Arlington County Board are representative of numerous other purchasers and consumers of milk and cream residing in said County; and in their capacity on said Board said members are charged with the duty of taking such measures as they may deem expedient to secure and

[1] *Code of Virginia*, 1950:

> "§ 3-369. Appeals to Supreme Court of Appeals and to circuit court of Richmond.—• • • Any person aggrieved by an order of the Commission fixing, revising or amending the price at or the terms upon which milk may be bought or sold, or by any other general action, rule, regulation or order of the Commission, may within forty days after the effective date of such action, rule, regulation or order, appeal therefrom to the circuit court of the city of Richmond. (1934, p. 564; 1940, p. 431; Michie Code 1942, § 1211bb.)"

promote the health, safety, and general welfare of the inhabitants of said County."

As to this paragraph, the State Milk Commission in its Answer to the Petition, stated (R. 49):

> "The respondent is not advised as to the allegations contained in paragraph 2 of the petition and neither denies nor affirms the facts set forth therein."

Paragraph 5 of the Petition alleged (R. 2):

> "5. A major proportion of the milk and cream purchased and consumed by residents in Arlington County, including milk and cream consumed by said petitioners and their families, is processed and bottled in the District of Columbia by distributors which transport such milk and cream in motor vehicles from said District and deliver such milk directly to the residences of retail consumers in Arlington County, Virginia, in the original packages, which movements and sales of milk and cream were and are in interstate commerce; and the State Milk Commission presumed to fix prices of milk and cream so moving in interstate commerce, and by said Order No. 4 such prices were increased by the Commission."

These allegations the Commission neither admitted nor denied. (R. 49)

Petitioners prayed (R. 4) for an order of the Richmond Circuit Court declaring the Commission's Order "null and void, and beyond the authority and jurisdiction of the . . . Commission in so far as they relate to interstate commerce in milk or cream" contending in substance that the Commission:

> "* * * has no authority or jurisdiction to regulate the retail prices of milk or cream which have been processed and bottled in the distributors' plants in the District of Columbia and transported by trucks of any such distributor from the District of Columbia and delivered in the original package or bottle by such distributor directly to the residence door of consumer-

purchaser at retail in Arlington County, State of Virginia." (R. 3)

Petitioners prayed also for an order requiring the Commission to revise and change its rules and regulations "so as to clearly state that the prescribed prices and other rules and regulations do not apply to interstate commerce beyond the authority and jurisdiction of [the] Commission.[2] (R. 5)

The record before the Richmond Circuit Court was "devoid of a factual basis for a consideration of the question of interstate commerce" (R. 52) and that Court therefore, pursuant to Title 3-371, Virginia Code 1950,[3] remanded the case to the State Milk Commission "for the taking of additional testimony as offered by the petitioners, the defendant or any other interested party relating to milk moving in interstate commerce in connection with the Arlington-Alexandria market area." (R. 52-53) (R. 50-53)

On remand, petitioners offered no evidence either in support of their allegation in respect to the interstate commerce question or in support of their claim to be interested parties (R. 70-100). Evidence adduced by others established that the milk in question was sold and delivered to purchasers in the state of Virginia (R. 77, 79) and that milk is supplied to public schools under contract awarded

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[2] In this connection it should be noted that Title 3-381, Virginia Code, 1950, provides, in respect of the Milk and Cream Act:

> "Not applicable to interstate commerce.—No provision of this article shall apply or be construed to apply to foreign or interstate commerce, except in so far as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto. (1934, p. 566; Michie Code 1942, § 1211jj.)"

[3] "• • • Additional testimony shall not be taken before the court, except to clarify the record or to introduce evidence as to the effect of the order upon the business of parties to the record below, or of producers standing in the same position as producer parties of record, but the court may, in proper cases, remand the record to the Commission for the taking of such further testimony as was not available upon the hearing appealed from, or such other testimony as the court shall provide may be taken. • • •"

the "successful bidder". (R. 74) Also at the hearing on remand the State Milk Commission, in respect of its administrative practice with reference to the control of milk, stated that (R. 95):

> "* * * As far as sales from distributors to either stores or, to homes, doorstep deliveries, we consider any such transactions, as may occur within the Arlington-Alexandria market area as defined in the regulation, to be under the control of the Milk Commission and to come within the scope of these regulations as regards to the pricing as set forth in the regulations."

On the record as supplemented on remand the Richmond Circuit Court found in accordance with the evidence of record that: (R. 101)

> "* * * the minimum price regulation in question is not a burden on interstate commerce: that the State Milk Commission can legally fix the minimum sale price of fluid milk sold and delivered to consumers in the Arlington-Alexandria market area from trucks of the District of Columbia distributors and that Arlington-Alexandria Market Order No. 4 should be sustained."

That Court then by decree (R. 101-2) sustained the Commission's Order and dismissed the appeal holding that: (R. 102)

> "* * * Order No. 4 establishing a minimum sale price for milk in the . . . Arlington-Alexandria market area does not constitute an unconstitutional burden on interstate commerce and that the State Milk Commission can lawfully establish the minimum sale price of fluid milk sold and delivered to consumers in [the] area, irrespective of the point of origin of the milk so delivered."

From the order of the Richmond Circuit Court there was filed in the Supreme Court of Appeals of Virginia a

"Petition for Appeal for Writ of Errors".

That petition was captained: (R. 105)

> "The County Board of Arlington County, Virginia, et als. *Complainant*", (Our emphasis)

And began:

> Your *petitioner*, the County Board of Arlington County . . . represents that *it* is aggrieved by a final decree . . . of the Circuit Court of the City of Richmond. * * *" (Our emphasis)

And concluded:

> "The question of law raised in the Assignments of Error have never been passed upon by this Honorable Court. The questions involved have a public, as well as a private, importance, and it is submitted that the decision of the lower Court should be reviewed, *not alone for the benefit of the complainant who has been aggrieved by the Order of the lower Court, but, also, for the future guidance of public authorities and private individuals in this Commonwealth.*
>
> * * *
>
> "Your *Petitioner requests* * * *" (Our emphasis)

And was signed:

> "The County Board of Arlington County, Virginia."

It appears that at this point in the proceedings the members of the board either as individuals or in their official capacity were dropped as parties, leaving only the County Board, as such, as the sole appellant in both the Supreme Court of Appeals of Virginia and in this Court, as will further appear in portions of this Memorandum to follow.

The Supreme Court of Appeals of Virginia entered an order refusing an appeal and affirming the decree Circuit Court holding that said decree was "plainly right". (R. 148)

Thence the appeal to this Court.

An inspection of the papers on file with this Court reveals that the members of the County Board are not before

this Court as appellants and that Counsel for the County Board did not even *purport* to bring them here. The "Petition for Appeal" in this Court reads as follows:

> "* * * The above-named complainant-appellant, the Arlington County Board, a body corporate which is the Governing body of Arlington County, considering itself aggrieved by the final decree . . . does hereby pray . . . that an appeal be allowed * * *. . . . that an order be made with respect to an appeal bond to be given by complainant-appellant * * *."
>
> * * *
>
> "Respectfully submitted,
>
> For the Arlington County Board,
> Complainant Appellant * * *"

Also, it should be noted that the "principal" on the Bond for Costs (R. 151) (not printed in the transcript of record) filed with this Court is the "County Board of Arlington County", the names of the members of which neither being referred to therein nor appearing thereon. An Order signed by the late Chief Justice Fred M. Vinson allowed the appeal "as prayed for" and at no time was an appeal prayed for on behalf of the members of the Board as individuals. In his brief, counsel for the appellant does not say that the members of the Board are before this Court as individual appellants. He says only that "The members of the Board who were individually named as *complainants in the original action,* were and their successors are individual consumers of milk in Arlington County." (Our emphasis) Confusion in this respect has resulted from the manner in which the papers on file have been captioned and possibly by the word "their" appearing twice in the body of the "Order Allowing Appeal" to this Court, above referred to. (R. 151)

In this Court the appellant on page 7 of its Brief asserts:

> "The Arlington County Board is a body corporate with specific right to sue and be sued, and empowered to take such measures as it may deem expedient to

secure and promote the health, safety, and general welfare of the inhabitants of said county. *The members of said Board, who were individually named as complainants in the original action, were and their successors are individual consumers of milk in Arlington County.* The Board appropriates funds to buy milk for its jail and schools (R. 1-5, 74). Its ordinance regulates sanitation standards for milk. The county is competitive with other parts of the Washington Metropolitan Area, and its prosperity requires that it be free from restraints not imposed in other areas. As elected representatives of the people, and responsible to them and spending tax funds, it brings this appeal to carry out its statutory functions of bringing suit to protect the general welfare of its people.

"The relief sought *by the Arlington County Board* is an order from the State Courts declaring the regulation of interstate commerce to be beyond the authority of the State Milk Commission and that the Commission be required to revise its rules and regulations to exclude regulation over interstate commerce (R. 4-5)." (Our emphasis)

ARGUMENT.

I.

The Arlington County Board Has No Standing to Prosecute This Appeal Because It Is a Creature of the State and Has No Privileges or Immunities Under the Federal Constitution Which It May Invoke in Opposition to the Will of the State.

Counties of Virginia are parts of the state; political subdivisions of the state created by the sovereign power for the exercise of the functions of local Government. *Fry* v. *County of Albermarle*, 86 Va. 195; *Fidelity & Deposit Company of Maryland* v. *Gill*, 116 Va. 86.

The following sections of the Code of Virginia, 1950, seem pertinent here:

"§ 15-1. DEFINITIONS. * * *:

"(1) The term "*board of supervisors*" shall mean the board of supervisors or other governing body, as the case may be, of a county.

* * *

"§ 15-3. How Counties May Sue and Be Sued.—Counties may sue in their own names for forfeitures, fines or penalties given by law to such counties, or upon contracts made with them; and, subject to the provisions of §§ 15-260 and 15-261, may be sued in their own names in the circuit court of such county, and the process instituting such suit may be executed by being served on the Commonwealth's attorney of the county. (Code 1919, § 2686.)

"§ 15-4. How Board of Supervisors May Sue: Seal.—The board of supervisors of any county, by the name of 'The Board of Supervisors of _____ county,' may sue and be sued in relation to all matters connected with their duties as such board, and have a seal and alter the same at pleasure. (Code 1919, § 2710.)

"§ 15-8. General Powers of Boards of Supervisors.—In addition to the powers conferred by other sections, the board of supervisors of every county shall have power:

* * *

"(5) To adopt such measures as they may deem expedient to secure and promote the health, safety and general welfare of the inhabitants of their respective counties, *not inconsistent with the general laws of this State.* * * * (Our emphasis)

In *Pawhuska* v. *Pawhuska Oil & Gas Co.*, 250 U. S. 394 (1919) the City of Pawhuska, Oklahoma, brought an action against State of Oklahoma and the Pawhuska Oil & Gas Co., complaining of an order of the Corporation Commission of the State regulating the rates and services of the gas company which supplied natural gas to the city and its inhabitants. The city claimed that the power to regulate the rates of public utilities located within its limits had been prior thereto irrevocably delegated to it by the state; that the city had exercised that right by entering into a contract with (and under which a franchise was granted to) the Gas Company under which contract the city reserved to itself the authority to regulate rates and services; and that subsequent state legislation creating and giving the state commission power to regulate all utilities and to fix rates

and an order of that commission increasing rates of the Gas Company, impaired the obligation of the city's contract in violation of the contract clause of the Constitution of the United States. The state court rejected this contention; and this Court, in dismissing the city's writ of error, said:

> "Dealing with this contention the state court, while fully conceding that the earlier statute delegated to the city the authority claimed by it, held that this delegation was to endure only 'until such time as the state saw fit to exercise its paramount authority;' that under the state Constitution the legislature could withdraw that authority from the city whenever, in its judgment, the public interest would be subserved thereby; and that it was effectively withdrawn from the city and confided to the Corporation Commission by the Act of 1913. The claim that this impaired the franchise contract was overruled.
>
> "It is not contended—nor could it well be—that any private right of the city was infringed, but only that a power to regulate in the public interest, theretofore confided to it, was taken away and lodged in another agency of the state,—one created by the state Constitution. Thus the whole controversy is as to which of two existing agencies or arms of the state government is authorized for the time being to exercise in the public interest a particular power, obviously governmental, subject to which the franchise confessedly was granted. In this no question under the contract clause of the Constitution of the United States is involved, but only a question of local law, the decision of which by the supreme court of the state is final.
>
> "'Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state.

> Neither their charters nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution." *Hunter* v. *Pittsburgh*, 27 U. S. 161, 178, 52 L. ed. 151, 159, 28 Supp. Ct. Rep. 40."

See also *Trenton* v. *New Jersey*, 262 U. S. 182 (1923); and *Williams* v. *Mayor and City Counsel of Baltimore*, 289 U. S. 36 (1933).

In Section 301, p. 556, of *Robertson and Kirkham Jurisdiction of the Supreme Court of the United States*, by Richard F. Wolfson and Philip B. Kurland, it is said:

> "The doctrine that municipal corporations created by the state for the better ordering of government and being subject to abolition by the state at any time have no privileges or immunities under the federal Constitution which they may invoke in opposition to the will of the state, has been a frequent basis for the *per curiam* disposition of cases brought to the Supreme Court."

and on page 560, *ibid.*, it is said:

> "The controlling consideration appears to be that the state may at any time terminate the existence of the municipal corporation altogether; hence it cannot be said to possess constitutional rights inconsistent with the existence of the power in the state."

In the instant case the State Milk Commission has exercised a power given it by statute in furtherance of the promotion of the general welfare of the inhabitants of the state. The County Board opposes the power as exercised on the same ground, to wit, "to secure and promote the health, safety, and general welfare of the inhabitants of said county". The conflict is direct. On the authority of the cases cited above it seems the state's will must prevail since the county has no standing to oppose it.

This Court under the "Pawhuska" doctrine will not act as referee in such a controversy. There is, therefore, no substantial Federal question presented for this Court's decision. This appeal should be dismissed for that reason alone.

The above cases would seem also to be a complete answer to appellant's argument impliedly made in its "Memorandum Reply as to Jurisdiction" that the County Board has standing before this court to represent citizens thereof as *parens patriae*.

If anyone represents the inhabitants of Arlington County as *parens patriae* in this action, it would seem to be the State Milk Commission, not the Arlington County Board. *Cf. Massachusetts* v. *Mellon*, 262 U. S. 447.

II.

The County Board Has No Standing to Prosecute This Appeal for the Further Reason That It Is Unaffected by the Order of the Commission.

The County Board purchases its milk under bid contract, the antithesis of making purchases subject to a fixed minimum price. (R. 74) The order of the Commission fixes the minimum wholesale and retail selling prices. Since the Board is neither a wholesale or retail purchaser it is unaffected by the minimum price order. For a litigant to prevail in this Court, it must show that enforcement of the challenged judgment would derive it—not another—of some right arising under the constitution or laws of the United States. *Liberty Warehouse Co.* v. *Burley Tobacco Growers Co-op. Assn.*, 276 U. S. 70; *Smith* v. *Indiana*, 191 U. S. 138. How, then, can it be said that the County Board is "aggrieved"?

III.

Assuming, Arguendo, the Members of the County Board as Individuals Are Before This Court as Appellants, They Are Without Standing to Prosecute This Appeal Because They Lack Sufficient Legal Interest in the Litigation to Give Them That Standing.

As has been demonstrated on pages 6 and 7 of this Memorandum, the members of the Board are not parties to this appeal but assuming, *arguendo*, they are, it is submitted that their interest in this controversy is legally insufficient to give them standing to prosecute this appeal.

Appellee is aware of no case which would support their claim to have that standing. Their interest, if any, would seem to be nothing more than a sentiment such as may be entertained by the members of the general public that if the Order of the Commission is nullified they *might* be able to purchase milk from District of Columbia distributors for less than they now purchase it—if, in fact, they do or would buy from those distributors. (None of these individuals testified, although invited to do so by the order of the Circuit Court of Richmond. For aught that appears they do not purchase milk at all, or if they do, they may all have bought from Alexandria Dairy or one of the other local distributors.) (R. 87) Such a sentiment would seem to clearly be insufficient in law. *Cf. Moffat Tunnel League* v. *United States*, 289 U. S. 113 (1933) in which a similar "sentiment" in an analogous situation was held not to constitute a legal interest. And certainly they have no right to compel the District of Columbia distributors to sell below the minimum price which the distributors in Virginia who both buy and process ther milk within the state must obey. *Cf. Edward Hines Yellow Pines, Trustees* v. *United States*, 263 U. S. 143 (1923) *infra*. Appellee does not know even at this late stage of the proceedings just what is the nature of the "right", if any, asserted or could be asserted on behalf of the members of the Board as individuals.

This Court said in *Fairchild* v. *Hughes*, 258 U. S. 126, 129-13:

> "Plaintiff has only the right, possessed by every citizen, to require that the government be administered according to law, and that the public moneys be not wasted. Obviously, this general right does not entitle a private citizen to secure by indirection a determination whether a statute, if passed, or a constitutional amendment about to be adopted will be valid."

and in *Massachusetts* v. *Mellon*, 262 U. S. 447, 486-87:

> "But the relation of a taxpayer of the United States to the Federal government is very different. His interest in the moneys of the Treasury—partly realized from taxation and party from other sources—is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation of any payment out of the funds so remote, fluctuating, and uncertain that no basis is afforded for an appeal to the preventive powers of a court of equity.
>
> "The administration of any statute likely to produce additional taxation to be imposed upon a vast number of taxpayers, the extent of whose several liability is indefinite and constantly changing, is essentially a matter of public, and not of individual, concern. If one taxpayer may champion and litigate such a cause, then every other taxpayer may do the same, not only in respect to the statute here under review, but also in respect of every other appropriation act and statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained."

The cases from which the above language is taken are not directly in point, at least not for the proposition presently being discussed, but we think that language pursuasive here and worthy of consideration.

IV.

Neither the County Board Nor Its Members Have Standing to Prosecute This Appeal Because They Have Been Subjected to No Legal Injury Actual or Threatened.

Edward Hines Yellow Pines Trustees v. *United States*, 263 U. S. 143 (1923) was an appeal by complainants from a decree of the District Court of the U. S. for the Northern District of Illinois dismissing a bill filed to set aside an order of the Interstate Commerce Commission. This Court affirmed. The facts were as follows:

The Interstate Commerce Commission entered an order requiring carriers to cease and desist from collecting a penalty charge of $10 per day on lumber held at reconsignment points. The plaintiffs were large lumber manufacturers and dealers whose shipments were made direct from the mills to destination and whose competitive situation would suffer if the carriers ceased to collect the penalty charges. Plaintiffs sought to set aside the order of the Commission on the ground that the order "deprives railroads of the use of their property without due process of law in violation of the 5th amendment, to the plaintiffs' detriment who are interested in maintaining both a wholesome lumber business and effective transportation [as prospective carriers]." The U. S. moved to dismiss the bill on the ground that plaintiffs had not shown such an interest in the subject matter as would entitled them to sue, and also for want of equity. In affirming the dismissal the Court said (pp. 147-149):

> "The mere fact that plaintiffs were not parties to the proceedings in which the order was entered does not constitute a bar to this suit. For it is brought to set aside an order alleged to be in excess of the Commission's power. *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 49, 56 L. ed. 83, 88, 32 Sup. Ct. Rep. 22; *Skinner & E. Corp.* v. *United States*, 249 U. S. 557, 63 L. ed. 772, 39 Sup. Ct. Rep. 375. But plaintiffs could not maintain this suit merely by showing (if true) that the Commission was without power

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to order the penalty charges canceled. They must show also that the order alleged to be void subjects them to legal injury, actual or threatened. This they have wholly failed to do. *It is not alleged that the carriers wish to impose such charges, and, but for the prohibition contained in the order, would do so. For aught that appears carriers are well satisfied with the order entered. Cancellation of a charge by which plaintiffs' rivals in business have been relieved of the handicap theretofore imposed may conceivably have subjected plaintiffs to such losses as are incident to more effective competition. But plaintiffs have no absolute right to require carriers to impose penalty charges.* Compare *Interstate Commerce Commission* v. *Chicago, R. I. & P. R. Co.*, 218 U. S. 88, 111, 54 L. ed. 946, 957, 30 Sup. Ct. Rep. 651. * * *

"The further claims of plaintiffs are, if possible, even more unsubstantial. They fear that, by reason of the order, they may, in the future, suffer in times of car shortage through the greater use of cars for storage. They fear that the equipment to be used in connection with the railroad which they expect to operate may be diverted, at some time in the future, from transportation uses. If their fears are realized it will be open to them to apply to the Commission for relief. As the plaintiffs do not show any interest which entitles them to sue, we have no occasion to consider either the power of carriers to impose the penalty charge, or the power of the Commission to order its cancellation." (Our emphasis)

On the authority of the *Yellow Pines* case, it seems clear that the Board or its members certainly have no right to require District of Columbia distributors to sell milk below the minimum price. Furthermore, there has been no allegation or proof that the distributors *wish* to sell below the minimum price, and but for the order of the Commission would do so. In the vernacular of the *Yellow Pines* case, "for aught that appears the [distributors] are well satisfied with the order entered." It would appear, therefore, that, as did the plaintiffs in *Yellow Pines*, the Board has failed to show that the order of the Commission has sub-

jected them (or it) to "legal injury either actual or threatened."

In *Massachusetts* v. *Mellon*, 262 U. S. 447, 448, this Court said:

> "We have no power per se to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justifiable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right. *The party who invokes the power must be able to show not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.* If a case for preventive relief be presented, the court enjoins, in effect, not the execution of the statute, but the acts of the official, the statute notwithstanding. Here the parties plaintiff have no such case."

In Section 297 of *Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States*, supra, it is said at page 543:

> "It results that in every case coming to the Supreme Court, whether invoking the exercise of its original jurisdiction or seeking review of the decision of state or lower federal court, it is a jurisdictional prerequisite that the Supreme Court be satisfied that the suit involves the vindication of rights personal to the parties thereto, which are entitled to and susceptible of protection by judicial action in that proceeding, and which are being invaded, or the invasion of which is certain and impending.
>
> "No one is immune from making this jurisdictional showing."

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Since the appellants are subjected to no actual or threatened legal injury, appellee can conceive of no order which this Court could issue which would afford them any practical and beneficial relief. Certainly, this Court cannot compel the District of Columbia distributors to sell milk below the minimum price in Virginia. The application of the judicial mind to this case would seem to be a futility.

CONCLUSION.

For the foregoing reasons and for the reasons previously presented in appellee's "Statement Opposing Jurisdiction", appellee respectfully adheres to the position that this Honorable Court should dismiss this appeal.

Respectfully submitted,

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